

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Liberty Counsel, Inc.,)	
a Florida corporation,)	Civil Action No.: 2:11-cv-789
Plaintiff,)	
)	District Judge James L. Graham
v.)	
)	Magistrate Judge Elizabeth Preston Deavers
Ohio Liberty Council Corp.,)	
an Ohio corporation,)	
Defendant.)	

CONSENT DECREE

WHEREAS, on August 31, 2011, Plaintiff Liberty Counsel, Inc. (“Liberty Counsel”) filed this action against Defendant Ohio Liberty Council Corp. (“OLC”), alleging trademark infringement under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, violation of Ohio’s Deceptive Trade Practices Act, O.R.C. § 4165.01 *et seq.*, and common law trademark infringement and unfair competition, (Dkt. 1);

WHEREAS, among other claims, Liberty Counsel alleged that OLC’s use of the mark “Liberty Council” in commerce since 2009 infringes upon Liberty Counsel’s valid, registered trademarks, including “LIBERTY COUNSEL” and “LIBERTYCOUNCIL,” (*Id.*, at ¶¶ 90-126);

WHEREAS, among other relief, Liberty Counsel sought a preliminary and permanent injunction restraining OLC from using the mark “Liberty Council,” (*Id.* at p. 17);

WHEREAS, OLC denies infringement, and, on November 7, 2011, filed a Counterclaim against Liberty Counsel, claiming, among other things, that Liberty Counsel improperly registered its “LIBERTYCOUNCIL” mark, and seeking to cancel its registration, (Dkt. 5);

WHEREAS, OLC continued to use the “Liberty Council” name and mark during the pendency of this action, and, on March 15, 2012, Liberty Counsel filed a Motion for Preliminary

Injunction, seeking to enjoin OLC from further using the mark “Liberty Council,” pending adjudication on the merits, (Dkt. 16);

WHEREAS, to resolve all claims in this action without further litigation, except for claims regarding attorney’s fees and costs, the parties have agreed to the entry of this Consent Decree;

WHEREAS, the Court has examined this Consent Decree and has concluded that its entry is warranted, and that its terms are fair, reasonable and in the public interest;

NOW THEREFORE, the Court, with the consent of the parties, hereby enters the Consent Decree, and ORDERS, ADJUGES and ADJUDICATES as follows:

1) OLC shall permanently cease and refrain from further using the words “Liberty Council,” or any other similar combination of the words “Liberty” and “Council” as part of its name or otherwise in commerce.

2) **Timetable for Compliance.** Without limiting the scope of paragraph 1, OLC shall comply with the following timetable:

a) On or before May 1, 2012, OLC shall effectuate a change of its corporate name with the Ohio Secretary of State. OLC’s new name shall be “Ohio Liberty Coalition,” or any other name that does not include any combination of the words “Liberty” and “Council.”

b) On or before May 15, 2012, OLC shall move its existing Internet website, www.ohiolibertycouncil.org and/or www.ohiolibertycouncil.com, to a new domain name, which shall not include any combination of the words “Liberty” and “Council.” On or before the same date, OLC shall permanently remove all references to “Liberty Council” or “Ohio Liberty Council” from its Internet website.

c) On or before May 15, 2012, OLC shall create and host a single Internet page at its current domain names, www.ohiolibertycouncil.org and www.ohiolibertycouncil.com, which shall consist solely of this message in black letters on a white background:

Ohio Liberty Council has changed its name to [new entity name].

To visit the website of [new entity name], click here. [link to new OLC website]

To visit the website of Liberty Counsel, click here. [link to Liberty Counsel website]

[New entity name] is not affiliated with Liberty Counsel.

d) On or before November 1, 2012, OLC shall permanently discontinue its use of the domain names www.ohiolibertycouncil.org and www.ohiolibertycouncil.com, to host a website, to route traffic to another website, for email communications, or for any other purpose. On or before the same date, OLC shall take these domain names permanently offline.

e) On or before May 15, 2012, OLC shall publicize its name change to its member organizations, constituents, members, donors and supporters, as well as the general public and the media, using its best efforts, in the same manner and through the same channels that OLC employs to disseminate other news in its regular course of business.

f) On or before May 15, 2012, OLC shall permanently cease to refer to itself as “Ohio Liberty Council,” “Liberty Council,” or by any other name that includes any similar combination of the words “Liberty” and “Council,” in interviews, online communications, print, radio or television media, or any other medium or forum.

g) On or before May 15, 2012, OLC shall notify all of its vendors, business partners, suppliers, business directories (online and offline) and all others with whom it transacts business regularly (collectively “business partners”), of its name change, and shall request that they reflect OLC’s new name in their records. Thereafter, OLC shall use its best efforts to

monitor how its business partners, member organizations, constituents, members, donors and supporters, as well as the general public and the media, refer to it, and to request modification as needed to correct any outstanding or future references to it as “Liberty Council” or “Ohio Liberty Council” or any other similar combination of the words “Liberty” and “Council.”

h) On or before May 15, 2012, OLC shall permanently cease to use any stationery, business card, checkbook, brochure, pamphlet, circular, or any other business, informational, promotional or advertising materials that refer to it as “Liberty Council” or “Ohio Liberty Council” or any other similar combination of the words “Liberty” and “Council.” On or before the same date, OLC shall destroy any remaining supplies of such materials, and shall certify in writing to Liberty Counsel when such destruction is complete.

i) On or before May 15, 2012, OLC shall permanently cease to offer, sell, provide, convey or otherwise use in commerce any t-shirts, bumper stickers, window clings, pocket constitutions, pens, magnets, buttons and any other informational, promotional or advertising materials that refer to it as “Liberty Council” or “Ohio Liberty Council” or any other similar combination of the words “Liberty” and “Council.” On or before the same date, OLC shall destroy any remaining supplies of such materials, and shall certify in writing to Liberty Counsel when such destruction is complete.

3) **Scope.** The provisions of this Consent Decree apply to OLC, its officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them.

4) **OLC Counterclaim.** Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and 41(c), the parties stipulate that OLC’s Counterclaim shall be, and is hereby, dismissed with prejudice. OLC does not waive its right to respond or defend against any demand for costs or attorneys fees.

5) **Construction and Interpretation.** This Consent Decree is the product of arms' length negotiations between parties represented by competent counsel, and, as such, its provisions shall not be construed against any one party in any subsequent dispute over its meaning or interpretation.

6) **Severability.** If any provision or obligation in this Consent Decree is deemed or adjudicated to be invalid, it shall be severed from this Consent Decree and the remaining provisions and obligations shall be fully enforceable to the greatest extent under applicable law.

7) **Modification.** This Consent Decree shall not be modified or amended except by mutual written consent of all parties, with approval of the Court.

8) **Non-Disparagement.** Liberty Counsel and OLC shall not publicly criticize or disparage each other in connection with the issues and disputes that arose in this lawsuit.

9) **Attorney's Fees and Costs.** Liberty Counsel is a prevailing party for purposes of attorney's fees and costs (taxable and nontaxable). Within the time provided by S.D. Ohio L.R. 54.1, Liberty Counsel may file a bill of costs for taxable costs. Within the time provided by S.D. Ohio L.R. 54.2, Liberty Counsel may file a motion seeking attorney's fees and nontaxable costs. OLC's response, and Liberty Counsel's reply, shall be filed within the time provided by S.D. Ohio L.R. 7.2(a)(2).

10) **Remedies and Relief.** The provisions of this Consent Decree are court-ordered remedies. Noncompliance is subject to contempt and other sanctions, remedies and relief.

11) **Final Judgment.** Pursuant to Fed. R. Civ. P. 58(a), the Clerk shall enter Final Judgment consistent with the terms herein.

12) **Continuing Jurisdiction.** This Court specifically retains jurisdiction over this action and this Consent Decree after the entry of Final Judgment, and may issue such further

orders or directions as may be necessary or appropriate to enter, construe, implement, modify, or enforce the terms of the Consent Decree, including resolving any disputes arising under this Consent Decree, and to provide any further relief as the interests of justice may require.

SO ORDERED on April 19, 2012.

s/ James L. Graham

James L. Graham

United States District Court Judge

Approved and agreed upon by the parties, through their undersigned counsel, on April 19, 2012:

/s/ Horatio G. Mihet

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